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In re Application of
Stitou et al.

Application No. 10/549,326

PCT No.: PCT/FR04/00617

Int. Filing Date: 12 March 2004

Priority Date: 18 March 2003

Atty. Docket No.: 032013-129

For: Method And Device For Rapid
And High-Power Cold Production

COMMUNICATION

This is in response to the declaration of the inventors filed on 03 February 2006, which is being treated under 37 CFR 1.42.

BACKGROUND

This international application was filed on 12 March 2004, claimed an earliest priority date of 18 March 2003, and designated the U.S. The International Bureau communicated a copy of the published international application to the USPTO on 07 October 2004. The 30 month time period for paying the basic national fee in the United States expired at midnight on 19 September 2005 (since 18 September 2005 was a Sunday). Applicants filed, *inter alia*, the basic national fee on 16 September 2005.

On 12 December 2005, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the filing of an executed oath or declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge under 37 CFR 1.492(h).

DISCUSSION

Review of the declaration of the inventors filed on 03 February 2005 reveals that joint inventor Bernard Spinner is indicated to be "deceased" and that Bruno Spinner, Caroline Spinner Brossard, Anne Christel Spinner Kohler, Nathalie Mazet and Martin Spinner have signed on his behalf. 37 CFR 1.42 provides in part that

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Meanwhile, 37 CFR 1.497(b)(2), as amended effective 08 September 2000, provides that

If the person making the oath or declaration is not the inventor (§§ 1.42, 1.43 or 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative.

Further examination of the declaration filed on 03 February 2006 reveals that it provides citizenship, residence and mailing address information for each of the five individuals signing on behalf of Bernard Spinner, but it does not provide "the facts which the inventor would have been required to state" in that Bernard Spinner's citizenship, residence and mailing address information is not listed.

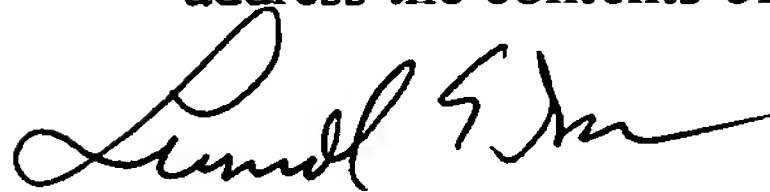
In addition, Bruno Spinner, Caroline Spinner Brossard, Anne Christel Spinner Kohler and Martin Spinner have signed in the capacity of "heir and legal representative to Bernard Spinner," while Nathalie Mazet has signed as "mother of minor Camille Spinner, daughter of and heir and legal representative to Bernard Spinner." There is no affirmative statement that the five signatories (or some other set of individuals) constitute "all" of the heirs and legal representatives of Bernard Spinner. This issue is exacerbated by the fact that applicants have not adequately clarified the status of Nathalie Mazet. Counsel states that "Camille Spinner is a minor, and her mother, Nathalie Mazet, has signed on her behalf." It is not clear whether Ms. Mazet is also an heir, and in what capacity she has signed the declaration (is she representing her own interests as an heir, or only Camille Spinner's interests as an heir, when she signs on behalf of Bernard Spinner? Are both Nathalie Mazet and Camille Spinner "legal representatives" of Bernard Spinner?) The language "mother of minor Camille Spinner, daughter of and heir and legal representative to Bernard Spinner" is particularly unclear; should this be interpreted as "signing on behalf of minor heir Camille Spinner as Camille Spinner's mother, Camille Spinner being a daughter of Bernard Spinner, an heir of Bernard Spinner, and a legal representative of Bernard Spinner, and Nathalie Mazet (also being/not being) an heir and a legal representative of Bernard Spinner"? It is noted that the mere fact that a particular heir may be a minor does not preclude that heir from signing a declaration of inventorship, so long as he or she understands the declaration. As such, if Camille Spinner understands the declaration, it would be appropriate for her to execute it herself. For these reasons, it would not be appropriate to accept the declaration of the inventors under 37 CFR 1.42 at this time.

CONCLUSION

The declaration is **NOT ACCEPTED** under 37 CFR 1.42, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42." Extensions of time may be obtained under 37 CFR 1.136(a). Failure to timely file a proper response will result in **ABANDONMENT**.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the PCT Legal Office.



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